

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24**

Robinson Aviation, RVA, Inc., and Computer
Intelligence Squared, Inc.

Employer¹

and

Professional Air Traffic Controllers
Organization, Inc. (PATCO)

Petitioner

Cases 24-RC-8607
 24-RC-8608

and

Professional Air Traffic Controllers
Organization, affiliated with the FPD, AHPE,
NUHHCE, AFSCME, AFL-CIO²

Incumbent-Union

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein the Act, a hearing was held on July 23, 2008³, before a hearing officer of the National Labor Relations Board, herein the Board, to determine whether a question concerning representation exists, and if so, to determine the scope of the unit

¹The name of the employers herein, Robinson Aviation, RVA, Inc. (hereinafter RVA Aviation), and Computer Intelligence Squared, Inc., referred to in the Petition and in the record as CI 2 Aviation, Inc. (hereinafter CI 2 Aviation), and herein collectively called the Employer, appear as corrected at the hearing, and as set forth in an August 2, 1999, Memorandum of Understanding between these two entities, respectively.

²The name of Professional Air Traffic Controllers Organization, affiliated with the FPD, AHPE, NUHHCE, AFSCME, AFL-CIO (hereinafter the Incumbent), appears as set forth in the Collective Bargaining Agreement (hereinafter CBA) between it and RVA Aviation.

³ The instant petitions were consolidated for hearing purposes. Although duly served with a copy of the Notice of Hearing and a subsequent Order Rescheduling Hearing issued on July 16, 2008, neither the Employer nor the Incumbent made an appearance at the hearing.

for collective bargaining. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.⁴

I. ISSUE:

The sole issue in this case is whether a Memorandum of Understanding entered into by RVA Aviation and the Incumbent on July 9, 2008, two days after the instant petition was filed, to merge the bargaining units represented by the Incumbent at various facilities of RVA Aviation throughout the United States, including the ones in Isla Grande and in Aguadilla, Puerto Rico, render inappropriate the single units sought by the Petitioner in Cases 24-RC-8607 and 24-RC-8608.

II. THE EMPLOYER'S OPERATIONS

RVA Aviation has a contract with the Federal Aviation Administration to operate approximately 85 air traffic control towers located in the southeast to the

⁴The Professional Air Traffic Controllers Organization, Inc. (PATCO) (hereinafter the Petitioner), and Incumbent filed Briefs which have been duly considered.

Upon the entire record in this proceeding the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

b. The record reflects that RVA Aviation, a Virginia corporation, operates an air traffic control tower in Isla Grande, San Juan, Puerto Rico, and another one in Aguadilla, Puerto Rico. During the past 12-months, it has purchased and received goods valued in excess of 50,000, directly from suppliers outside the Commonwealth of Puerto Rico.

c. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

d. The labor organizations involved claim to represent certain employees of the Employer. The record reflects that the Petitioner is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with Employers and representing employees concerning rates of pay, hours and other terms and conditions of employment. Accordingly, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. Alto Plastics Manufacturing Corporation, 136 NLRB 850 (1962); Gino Morena Enterprises, 181 NLRB 808 (1970). Additionally, I take administrative notice of the Certificate of Representative issued to the Petitioner on December 11, 2006, in Case 10-RC-15588, certifying it as the exclusive collective bargaining representative of the traffic control specialists employed by RVA Aviation at its Athens, Georgia, facility.

I also take administrative notice of the Certificate of Representative issued to the Incumbent on January 23, 1997, in Case 24-RC-7833, certifying it as the exclusive collective bargaining representative of the traffic control specialists employed at the Isla Grande, Puerto Rico, facility.

e. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of section 9(c) (1) and section 2(6) and (7) of the Act.

southwest United States. The record reflects that RVA Aviation has, in turn, subcontracted CI 2 Aviation to operate an unspecified number of its facilities, including the Aguadilla and the Isla Grande facilities herein. In this regard, the Vice-President for Operations of RVA Aviation testified that CI 2 Aviation is the entity who hires and fires employees, and that it has a Manager in each facility who supervises their work and handles employee grievances at the facility and/or at the second level, although occasionally, in the latter case, in consultation with RVA Aviation.

According to the witness, however, RVA Aviation is the entity who formulates and establishes labor relations policy for the facilities covered by the CBA, and who deals with the processing of grievances beyond the second level. In this regard, the record reflects that there is a Memorandum of Understanding entered into on August 2, 1999, which the witness testified continues to be in effect, and which provides that those facilities subcontracted to CI 2 Aviation would continue to be covered by the aforementioned CBA.

The facts set forth above sufficiently demonstrate that RVA Aviation and CI 2 Aviation share or codetermine matters governing the essential terms and conditions of employment of the employees in the units. Thus, while the petitioned for employees are employees of CI2 Aviation, the latter has entered into a Memorandum of Understanding by which their terms of employment are essentially governed by the CBA between RVA Aviation and the Incumbent. Accordingly, I find that RVA Aviation and CI2 Aviation are joint employers of the unit employees at each of the respective facilities operated by CI 2 Aviation

pursuant to a subcontract with RVA Aviation. Greenhoot, Inc., 205 NLRB 250(1973); N.K. Parker Transport, 332 NLRB 547, 548 (2000).

III. LABOR RELATIONS

The Incumbent was certified on January 23, 1997, in Case 24-RC-7833, as the exclusive collective bargaining representative of the petitioned for unit employees at Isla Grande, Puerto Rico; and, on or about August 17, 2007, it was voluntarily recognized by RVA Aviation's predecessor, Robinson-Van Buren Associates, as the representative of the petitioned for unit employees, in a separate unit, at the Base Borinquen and/or Rafael Hernandez Airport, in Aguadilla, Puerto Rico.

RVA Aviation and the Incumbent have a CBA, which is effective by its terms for a period of forty two (42) months commencing on September 30, 2005. This CBA is applicable to 23 facilities of RVA Aviation including Isla Grande and Aguadilla, which are listed in Annex A of the CBA. Article 2 of the CBA reads as follows:

RVA Aviation recognizes the Professional Air Traffic Controllers Organization, a division of the Federation of Physicians and Dentists/Alliance of Health Care Professional Employees, NUHHCE, AFSCME, AFL-CIO, as the exclusive representative for the bargaining units listed in Annex A for the purpose of collective bargaining in all matters relating to wages, hours of employment, and other terms and conditions of employment for all employees in the bargaining units as determined by the National Labor Relations Board.

IV. THE BARGAINING UNITS

As noted above, prior to July 9, 2008, Annex A contained a listing of the 23 facilities represented by the Incumbent and stated, inter alia, that:

PATCO and RVA have entered into a master labor agreement covering these facilities.

The record reflects, however, that RVA Aviation and the Incumbent entered into a Memorandum of Understanding on July 9, 2008, wherein they agreed to merge the subject 23 facilities into one bargaining unit.

The relevant language in the Memorandum, which is also entitled Annex A and appears as an attachment to the CBA was submitted to the Region by RVA Aviation prior to the hearing, states that:

PATCO and RVA agree that, while PATCO was certified separately in each of these locations by the National Labor Relations Board, or granted voluntary recognition by the employer, the employees at these locations have been merged into one bargaining unit.

As noted above, the above memorandum is dated July 9, 2008.

V. ANALYSIS

The Board has declined to apply its unit merger doctrine to block an election in a single unit where, as here, the period between the filing of an election petition and the appearance of a merger was of “brief duration”, i.e. less than a year. West Lawrence Care Center, 305 NLRB 212, 217 (1991) Thus, in West Lawrence Care Center, where the petition was filed 10 months after a single employer unit was merged into a multi employer unit, the Board found that a merger of such “brief duration” did not preclude the Board from directing an election in the former single unit.⁵

In the instant case, the record establishes that the Isla Grande and the Aguadilla locations were certified and voluntarily recognized, respectively, as separate bargaining units. The reference to “bargaining units” in the recognition clause in the CBA evinces

⁵See also U.S. Pillow, 137 NLRB 584 (1962), where the Board found that where there is a prior history of bargaining on a single employer basis, a rival petition for a single employer unit will be processed if timely filed before the insulated period of the last individual contract even if the employer has adopted or joined in a multi-employer contract which would otherwise be a bar to a petition.

that each facility constitutes a single bargaining unit. In this regard, there is no evidence of employee interchange, common supervision or work related contact among the traffic controller specialists at the different facilities such as to rebut the presumption that a single facility is an appropriate unit. Hegins Corp., 255 NLRB 1236 (1981) Further, there is no evidence in the record that prior to July 9, 2008, the parties sought to merge the individual units listed in Annex A into a single, multi-facility unit.⁶ The fact that there is a single or master CBA covering these locations and providing for commonality with respect to employees' terms of employment is not, without more, sufficient to establish a merged unit or that the parties had agreed to merge the units prior to July 9, 2008. Duval Corporation, 234 NLRB 160 (1978); Delta Mills, Inc., 287 NLRB 367 (1987); Utility Workers Local 11, 203 NLRB 230 (1973), enfd. 490 F.2d 1383 (6th Cir. 1974).

Accordingly, in view of the history of bargaining as individual units, I shall direct an election in the individual units of Isla Grande, Puerto Rico and Aguadilla, Puerto Rico found appropriate herein.

VI. The Units:⁷

The following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of section 9(b) of the Act.

⁶ Administrative notice is taken of the Decision and Direction of Election issued in Case 13-RC-21643 et al, Midwest Air Traffic Control Service, Inc., as it involves the Employer and the Incumbent herein. Although said Decision deals with a different CBA and facilities of the employer, it is pertinent to note that the employer had recognized the Union as the representative of all "traffic control specialists employed at the traffic control towers listed in Appendix 1" and that it was concluded that each individual unit was an appropriate unit.

⁷ The Units appear as set forth at the hearing.

Case 24-RC-8607:

All full-time and regular part-time air traffic control specialists working at the Isla Grande Airport in San Juan, Puerto Rico; excluding air traffic managers, guards and supervisors as defined in the Act.

Case 24-RC-8608:

All full-time and regular part-time air traffic control control specialists working at the Rafael Hernandez Airport in Aguadilla, Puerto Rico; excluding air traffic managers, guards and supervisors as defined in the Act.

There are approximately 4 employees in each of the units found appropriate here.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.⁸ Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United

⁸ As provided for in Section 103.20 of the Board's Rules and Regulations, the Employer is required to post copies of the Board's Official Notice of Election in conspicuous places at least 3 full working days (excluding the day of the election, Saturdays, Sundays, and holidays) prior to the date of the election; said notices are to remain posted until the end of the election. Failure to post the election notices as required by the Board's Rules and Regulations shall be grounds for setting aside the election whenever proper and timely objections are filed. An employer shall be conclusively deemed to have received copies of the election notices unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of said notices.

States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the Professional Air Traffic Controllers Organization, Inc. (PATCO); the Professional Air Traffic Controllers Organization, affiliated with the FPD, AHPE, NUHHCE, AFSCME, AFL-CIO; or neither.

EMPLOYER TO SUBMIT LISTS OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list for each unit, containing the **full** name and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). These lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the lists should be alphabetized (overall or by

department, etc.). Upon receipt of the lists, I will make them available to all parties to the election.

To be timely filed, the lists must be received in the Regional Office, **National Labor Relations Board, Region 24, La Torre de Plaza, Suite 1002, 525 F.D. Roosevelt Ave., San Juan PR 00918-1002**, on or before, **August 20, 2008**. No extension of time to file these lists shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file these lists. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The lists may be submitted by facsimile transmission at 787-766-5478, or by e-mail to the Regional Office. See OM 05-30 and OM-0707, which are available on the Agency's website at www.nlrb.gov, for a detailed explanation of requirements which must be met when electronically submitting documents to be Board and Regional Offices. Guidance can also be found under *E-Gov* on the Board's website. Since the lists will be made available to all parties to the election, please furnish a total of two (2) copies, unless the lists are submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notice of Elections provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the

Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington DC 20570. A request for review may also be submitted by electronic filing. See attachment provided in the initial correspondence in this case or refer to OM 05-30 and OM 07-07, which are available on the Agency's website as www.nlr.gov, for a detailed explanation of requirements which must be met when electronically submitting documents to the Board and Regional Offices. Guidance can also be found under *E-Gov* on the Board's website. This request must be received by the Board in Washington by 5:00 pm, EST on **August 27, 2008**. This request may ***not*** be filed by facsimile.

Dated August 13, 2008.



/s/

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